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[2022] EWCA Crim 1496

IN THE COURT OF APPEAL

CRIMINAL DIVISION



CASE NO 202203039/A1

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 3 November 2022

Before:

LADY JUSTICE CARR DBE
MR JUSTICE GARNHAM
HIS HONOUR JUDGE FLEWITT KC
(Sitting as a Judge of the CACD)

REX
V
RACHEL LOUISE HAINSWORTH

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MISS C NODDINGS appeared on behalf of the Applicant

J U D G M E N T

LADY JUSTICE CARR:

Introduction

1. The Registrar has referred this application for leave to appeal sentence to the full court. We grant leave.
2. The appellant is now 31 years old. On 26 August 2022 she pleaded guilty to a single count of attempted theft of a goat, contrary to section 1(1) of the Criminal Attempts Act 1981. On 11 October 2022 she was sentenced by His Honour Judge Bayliss KC ("the judge") to four months' immediate imprisonment. Her co-defendant, Christopher Telfer ("Telfer"), also in his thirties, received an identical sentence.

The facts

3. The facts are unusual and can be briefly summarised as follows. In the early hours of 14 November 2020 the appellant and Telfer attempted to steal a goat from a rare breed farm located in the grounds of Temple Newson House in Leeds. A security guard saw them on CCTV footage, which we have also viewed, walking into nearby woods while wheeling a shopping trolley bag. Inside the trolley bag was a spell book called "The Grand Grimoire", a black magic grimoire containing instructions on how to summon a demon by skinning a virgin kid adorned with a garland of verbena, attached with a green ribbon, using a blade of pure steel and in a solitary location by a fire of white wood. Inside the bag there was also a steel kitchen knife, a packet of dog food, a garland of leaves, cut firewood, a green ribbon and a compass. It had been the intention of the appellant and Telfer to slaughter a goat in accordance with the book's instructions as a sacrificial gesture in order to summon a pagan demon.
4. The CCTV footage first captured the appellant going into the goat pen and attempting to catch one of the goats, followed shortly afterwards by Telfer. They failed in their endeavours. Eventually some of the goats left the pen of their own accord. The couple were confronted by the security guard and arrested at the scene shortly afterwards. The appellant was found to have a piece of rope formed into a noose in her coat pocket.
5. In her police interview the appellant read a prepared statement in which she denied conspiring to steal a goat and said she had gone to the farm to see the animals as she had felt suicidal and found it therapeutic.
6. A pre-sentence report reported the appellant as being at a low ebb in her life, on benefits and struggling to get work. She was socially isolated living with her mother. She had long-term issues with depression and anxiety. She had been working for a fast food

establishment. She had become interested in paganism and had been casting spells for some time. She had found a spell on the internet to increase her luck and it involved the sacrifice of a goat.

7. In the event that the custody threshold was passed, the author of the pre-sentence report suggested that immediate imprisonment would not necessarily follow. Such a course would place the appellant in the company of more sophisticated individuals and there were concerns about her vulnerability. A proposal was made for a community order or suspension for 12 months with an unpaid work requirement and 20 rehabilitation activity requirement days.
8. The judge had before him character references from the appellant's father and aunt, in which the appellant was described as having an awkward manner and someone who found it difficult to relate to others. She was lonely and needed good friends. She did not always get on with her mother. She experienced disappointment at losing jobs because she did not fit in. She had a less than ideal relationship with a boyfriend. She was quiet, hardworking and reliable.

The sentence

9. Considering the Sentencing Council Guideline for Theft, the judge proceeded on the basis that whilst the appellant's methods were not sophisticated, significant planning was involved. She and Telfer had gone to the farm with the purpose of slaughtering a goat in a ritualistic way, armed with items both to catch the goat and then to slaughter it, so culpability was high. In terms of harm each goat was worth around £200. On the basis of value alone the harm would be Category 4. However the intention was to slaughter the goat in an inhumane way as part of a ritual causing deliberate, gratuitous and considerable unnecessary suffering. The Judge therefore considered harm to fall into Category 3. The starting point was therefore one year's imprisonment with a range of 26 weeks to two years' imprisonment. The judge took into account the fact that this had only been an attempt, that the appellant was otherwise of impeccable character and her testimonials. He referred to her difficult life experience and the difficult conditions in prison due to Covid pandemic. He granted one-third credit for her guilty plea. He considered suspension in terms but concluded as follows:

"I've considered whether it could be suspended, but, in my judgment appropriate punishment for this type of offending which had it succeeded would have led to unnecessary suffering for an animal can only be achieved by immediate custody. The courts must deter such behaviour and only an immediate prison sentence can achieve that not just to punish you, but to deter others who might be tempted to steal animals for ritual slaughter."

Grounds of appeal

10. Miss Noddings has appeared for the appellant, as she did below, and we are grateful for her submissions. She submits that the sentence was manifestly excessive for two reasons. First, it is said that the judge erred in categorising the offence as falling within Category 3A, with the result that the custodial threshold should not have been passed. The judge had erred in categorising the offending as 3A in circumstances where the quantified value of the goat was only £200, well below the maximum range of up to £500, the basis for Category 4 loss. The higher intended harm could have been accommodated by an uplift within the range for Category 4A offending. On that basis a community order would have been the correct penalty.
11. Alternatively, if the custodial threshold was passed, Miss Noddings submits that the custodial sentence should have been suspended. She submits there are five reasons for taking such a course. Balancing out the factors as identified in the Sentencing Council Guideline for the Imposition of Community and Custodial Sentences, first, the risk of danger posed to the public was low. Secondly, there was a realistic prospect of rehabilitation. Thirdly, and supporting the submission that risk was low, there had been 23 months' delay between the offending and the appellant coming to court with no intervening repeat offending. Fourthly, there was significant personal mitigation. Fifthly, there was no history of poor compliance with court orders.
12. So far as the judge's reference to deterrence was concerned, whilst Miss Noddings accepts deterrence is a legitimate factor for the judge to have taken into account, there was no evidence of this sort of offending being a prevalent problem within the community. When weighed in the balance, the element of deterrence could not properly be said to outweigh the other factors in favour of suspension.
13. In short, it is said that the judge fell into error in concluding that appropriate punishment could only be achieved by immediate custody.

Discussion

14. As the judge said, this was to be some form of black magic involving the slaughtering of a goat. He considered the Sentencing Council Guideline for Theft very carefully, taking as we have indicated a custodial term of six months before applying one-third credit for guilty plea. We pay credit at the outset to the judge's evident care in assessing and sentencing in what was a difficult case.
15. In our judgment there is no room for interference with his categorisation of culpability as Category A, on the basis of significant planning. There was no safe basis to conclude

that the appellant was in any way under Telfer's direction or control at the time. This was something she herself expressly eschewed, when speaking to the author of the pre-sentence report. As for harm, again we see no proper criticism to be made of the judge's categorisation of harm as Category 3, once intended harm is taken into account.

16. So in our judgment a custodial term of four months was not manifestly excessive. Including the question of delay, a term of six months, being half the starting point for Category 3A offending, was wholly unobjectionable. We would note also that the judge's decision to afford the appellant full credit for guilty plea of one-third was generous to her, in circumstances where her guilty plea was not entered until the plea and trial preparation hearing.
17. In short, the judge was thus fully entitled to conclude that the custodial threshold was passed and that a term of four months' imprisonment was appropriate given, amongst other things, the potential unnecessary suffering of the animal.
18. The real gravamen on this appeal is whether or not immediate custody was necessary. The Sentencing Council Guideline on the Imposition of Community and Custodial Sentences was directly in play and the judge clearly had it in mind, because he referred expressly to one of the factors there identified. Equally, he clearly had the contents of the pre-sentence report and the other available mitigation to the appellant before him.
19. The factor in the Imposition of Community and Custodial Sentences Guideline to which the judge made express reference was his conclusion that appropriate punishment could only be achieved by immediate custody. He did not refer to the other factors identified in the Guideline.
20. A consideration of those factors would have revealed the following. First, the appellant presents only a low risk or danger to the public. That was evident not only from the contents of the pre-sentence report but also from the appellant's behaviour following the offending in question and in the lead up to sentence. Secondly, there was a realistic prospect of rehabilitation. The author of the pre-sentence report commented that, if the appellant were to engage with intervention, this could support her in improving her emotional management. Work programmes would enable her to develop appropriate and pro-active thought processes, alongside assisting her to increase her employability and decrease aspects of social isolation. Through these methods and addressing these areas, it would become more likely that the appellant could reduce the likelihood of further offending. In this regard, it was part of the author's proposal that rehabilitation activity requirement days could be used. Thirdly, there was strong personal mitigation. Not only was the appellant of previous good character but she was, as the judge recognised, of impeccable good character. She expressed remorse. Also, and materially, she evidently had mental health difficulties including anxiety and depression. She had from time to time been employed and there were difficulties in her personal

circumstances which may have contributed to the background of the offending overall. Finally, there was no history of poor compliance with court orders.

21. We consider that the combination of those other factors, certainly collectively possibly in some instances individually, pointed powerfully in favour of suspension. In those circumstances, albeit not without some hesitation, we are driven to conclude that the judge was wrong to conclude that appropriate punishment could only be achieved by immediate custody.

22. We therefore quash the sentence of immediate imprisonment. We allow the appeal. We substitute a custodial term of four months, such term to be suspended for 12 months. Given the time that the appellant has already spent in custody, there will be no additional requirements. The appellant must understand that if during the 12-month period she commits any offence she will be brought back to court and the sentence will be brought into operation, either in full or in part.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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